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THE 1987 SWEDISH MARRIAGE CODE

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THE 1987 SWEDISH MARRIAGE CODE

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CONTENTS

Introduction 1

TITLE I. General Provisions 7

Chapter 1: Matrimony 8

TITLE II. Entry into and Dissolution of Marriage 10

Chapter 2: Impediments to Marriage 10

Chapter 3: Investigating Marriage Impediments 12

Chapter 4: Marriage Ceremony 13

Chapter 5: Divorce 16

TITLE III. Matrimonial Economic Relations 19

Chapter 6: Maintenance 19

Chapter 7: Marital Property 21

Chapter 8: Gifts Between Spouses 23

Chapter 9: General Provisions on Division of Marital Property 24

Chapter 10: What Should Be Included in a Division of Property? 26

Chapter 11: Division of Property 27

Chapter 12: Equitable Distribution of a Matrimonial Estate 30

Chapter 13: The Effect of a Division of Property 32

TITLE IV. The Rules of Procedure 33

Chapter 14: Matrimonial Case and Alimony 33

Chapter 15: Questions Relating to Entry into Marriage 36

Chapter 16: Registration 37

Chapter 17: The Executor 37

Chapter 18: Common Provisions 39

Addendum 39

The 1958 Inheritance Law 40

The 1970 Law on Real Property 41

The 1941 Insurance Law 42

The 1982 Name Law 43

Bibliography 44

Introduction

In ancient times before Christianity was introduced in Sweden, marriage was a private family matter and of little concern to society. According to the so-called provincial laws, [1] an act of marriage consisted of a betrothal, a marriage ceremony, and the consummation of the marriage in the presence of witnesses. [2] By the mid-11th century, however, Christianity had been introduced in Sweden, and the Church began to enforce canon law. In the beginning the Church had to accept the public nature of the marriage consummation, and the law provided that a priest should also be present and bless the couple at the time of consummation. [3] The Church remained determined to introduce a proper Christian matrimonial ceremony. Yet, despite all Christianizing efforts, Germanic traditions continued to dominate marriage customs in Sweden. A Papal bull of the year 1216 stated that the Pope had been informed that there were people in Sweden who did not follow the sacred matrimonial norms and thus continued to pursue pagan rituals. [4]

About five centuries later a uniform code of laws was introduced in Sweden. [5] With the introduction of the 1734 Code, [6] the absolute authority of the Church in performing and legalizing marriage was finally recognized. According to the Code, the husband was the head of the family and the guardian of his wife. The husband administered and managed not only the

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[1] Most of these written codes are known to have come into force around the beginning of the 13th century.

[2] *Statens Offentliga Utredningar* (SOU 1978:55), p. 33.

[3] *Id.*

[4] *Id.*

[5] During this period a church ceremony was usually added to the customary form of marriage.

[6] The Code was the product of about 48 years of work by a royal commission which was appointed in 1686.

common marital property but also his wife's private property. Hence, no agreements on the part of the wife respecting her own private property could be enforced without the consent of her husband.

Intra-Scandinavian legislative cooperation began in the second half of the 19th century. The Scandinavian legislative cooperation in family law led to the codification of an almost uniform family law in Scandinavia in the years from 1909 to 1920. [7] The Marriage Act of 1920, which resulted from this reform, entered into force on January 1, 1921, and abolished all the rules concerning the husband's dominant position, in particular with regard to property rights. The 1920 Marriage Act was based on the legal philosophy of equality before the law.

Marriage law in Sweden has been under constant revision since 1920. The major amendments to the law stem from post-World War efforts to accommodate the requirements of social change. However, the rapid pace of these changes, namely the increase in the number of children born out of wedlock, the increasing number of divorces, and also the tendency, particularly among the younger people, towards cohabitation outside the legal bounds of marriage, brought about an urgent need for a more drastic and comprehensive reform in the area of family law on the whole and in the marriage law in particular.

In 1969 the Swedish Government decided to reform the marriage law. The question had arisen as to whether there was any need to maintain a legal institution called marriage. Some authorities felt it might be adequate to reduce the legal bond of matrimony to a simple registration with a government office. Others felt that if there was still a need for the legal institution of marriage, then there was a need to examine what principles of law should be retained and which provisions should be considered obsolete. There were also concerns about how such a law should

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[7] F. Schmidt, "Äktenskapsrätten Infor Framtiden," *Tidskrift for Rettsvitenskap* 431-435 (1965).

be written. It could be written in a traditional way to be understood only by lawyers; or, since the marriage law concerns all kinds of people, the law could be written in simple language understandable by all.

Thus, in 1969 the Minister of Justice called upon a committee of experts to reform the family law (*familjelagssakkunniga*), hereinafter the Committee. The first task of the Committee was to prepare a draft proposal for a new marriage law. In giving the Committee its terms of reference, the Minister of Justice indicated the new legislation had to be neutral in respect to various forms of cohabitation and different ethical beliefs. Establishing a family within the framework of the legal institution of marriage was still a natural form of cohabitation for most people. Nevertheless, the legislation was not intended to create unnecessary difficulties and disadvantages for those who have children and prefer to conduct family life without getting married. The Committee was also to consider whether the marriage ceremony could be replaced by a simple entry of the appropriate registration form in the records, and whether such a registration could be in itself conclusive proof of the formal validity of a marriage. The parties would still be able to complete the act of marriage by any kind of religious or social celebration of their choice. At the same time, no legal effects would be attached to such ceremonies. [8] According to the Minister of Justice, the legal institution of betrothal had become obsolete and should be abolished. The Committee was to consider the simplification of the rules governing marriage dissolution, the modification of norms respecting marriage impediments, and the revision and reform of provisions concerning the economic effects of marriage. [9]

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[8] SOU 1972:41, pp. 57-60.

[9] *Id.*

The Committee submitted its first report in 1972. Having decided to carry out its task successively and in parts, the Committee presented its draft proposal reforming the rules governing entry into and dissolution of marriage.

With regard to the function of the family, the Committee expressed the view that the conditions of life for which legal marriage was intended were highly diversified. The Committee pointed out the importance of the changes that had taken place in the structure of society, with particular emphasis on the fact that certain functions which were once performed by the family either have been or could be assumed by society. [10]

In defining the term *marriage*, the Committee stressed that while a legal marriage does not always imply actual cohabitation, a marriage-like cohabitation with family functions often exists without the legal form of marriage. On the basis of the available data, the Committee found that approximately 6.5% of cohabitants referred to cohabitation without marriage. [11]

According to the Committee, the purpose of marriage legislation in the first place is to supply rules for the solution of conflicts arising in relations between a man and a woman or as a result of the dissolution of a cohabitation. These conflicts relate to a special social situation, namely cohabitation with family functions, which differ from conflicts arising between individuals in general, and for this reason the Committee felt these issues call for special legislation. [12]

The Committee analyzed the question of the neutrality of the marriage law and found that two different interpretations could be given to this principle. One implies that society may be in a position to introduce a special set of rules that are drafted with a view to solving the

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[10] SOU 1972:41, pp. 62-82 and 250.

[11] *Id.* at 82-88 and 251.

[12] *Id.*

problems which arise in connection with a man and a woman cohabiting, intending to function as a family, without requiring that they be legally married. Society thus remains neutral by giving them full freedom of choice. The other interpretation implies that neutrality, i.e., no discrimination toward either form of cohabitation, exists only if the regulation of the relations between a man and a woman toward each other and toward society is the same regardless of whether they are married or not. The Committee found that the two forms of neutrality are incompatible and thus cannot be put into force at the same time. It was, therefore, necessary to make a balance between the two interpretations given to the term *neutrality*. [13]

Considering the effect of social legislation and tax law on various forms of cohabitation, the Committee reemphasized that in formulating rules on taxation and social benefits, efforts should be made to avoid the disadvantages for being married and gaining privileges for being divorced. [14] The Committee concluded that if marriage were retained as a legal institution with a central role, it would be difficult to draft legislation in a manner that would imply a far-reaching social neutrality regarding the forms of cohabitation, although in certain respects the same rules could be applied to all forms of cohabitation. The purpose of marriage legislation, according to the Committee, was to solve practical problems which might arise as a result of the cohabitation of a man and a woman who function as a family. [15]

Concerning a couple's entry into marriage, the Committee suggested a simple procedure by which the parties could personally and in writing notify the appropriate authority of

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[13] SOU 1972:41, pp. 89-101 and 251-254.

[14] *Id.*

[15] *Id.* at 89-101 and 251-254.

their intention to marry. [16] This suggestion, however, did not gain acceptance, and thus the provisions on the marriage ceremony were not greatly changed. [17]

The Committee also expressed the view that it was desirable in a modern society to reduce divorce impediments. [18] In recommending the simplification of the procedure relating to the dissolution of a marriage, the Committee stressed the fact that a marriage is a voluntary contract between two consenting private individuals. The Committee found that legal restrictions on dissolving a marriage, in order to keep the family together, would at most have a certain marginal effect. The important factor in this respect presumably is the solution of the actual difficulties of an economic, social, and physical nature which often arise when a family breaks up. [19]

The Committee's 1972 report led to legislation in 1973 (*Svensk Författningssamling* [SFS] 1973:645), which brought about major amendments to the provisions of the 1920 Marriage Law on marriage and its dissolution. Yet another of the Committee's reports formed the basis of the 1978 amendments (SFS 1978:854) on family maintenance.

The Committee submitted its final report on marriage law in 1981. Although the Committee's main effort at this time was concentrated on the rules governing the economic relations of the married couple, the 1920 Marriage Law was, in the mean time, entirely revised and reorganized.

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[16] SOU 1972:41, pp. 10 and 257-258.

[17] *See infra*, Chapter 4, on provisions respecting the marriage ceremony.

[18] SOU 1972:41, 123-140.

[19] *Id.* at 179-190, 254-255, and 260-261.

The Committee's report was adopted after certain modifications in 1987 as a new law of marriage and entered into force on January 1, 1988. The new Marriage Code is divided into four titles comprising 18 chapters, a pattern that will be followed in this study.

It should be pointed out that, except for a few provisions on economic relations, the Law is written in very clear and simple language and is, therefore, comprehensible to the great majority of Swedish-speaking readers.

TITLE I. General Provisions

The Marriage Code [20] begins with a chapter in which the fundamental principles of marriage and the rules describing the meaning of the concept of *marriage* are stipulated. The 1920 Marriage Law began with a chapter concerning betrothal. However, the Committee charged with preparation of the 1987 Law suggested that the chapter respecting betrothal as a legal institution and its consequences be abolished. [21] The Committee observed that the importance of engagement had been reduced, and that it could be assumed that a man and a woman who had agreed to marry were often unaware of the legal effects the breaking an engagement. Thus, either party should be able to break the engagement without legal consequences. [22]

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[20] *Äktenskapsbalk* (SFS 1987:230), entered into force on January 1, 1988, by the Law on Promulgation of the Marriage Code (SFS 1987:788).

[21] The most important legal consequence of betrothal was the legitimacy of a child and his right to an inheritance in connection with the engagement. However, since according to the Swedish succession law, children out of wedlock inherit both parents, the issue can no longer raise any problem.

[22] SOU 1972:41, pp. 116-122.

Chapter 1: Matrimony

Only a man and a woman can be married, and those who enter into a marital relationship are called husband and wife (art. 1).

At first, the Committee considered including provisions reemphasizing the principle of monogamy. The Committee, however, decided not to recommend a provision because Sweden's European cultural background and public policy had rejected bigamy/polygamy on the whole. [23] Taking into consideration the ever increasing changes in social behavior, the Committee concluded that the principle that marriage could be entered into only by a man and a woman had to be reemphasized.

The married couple are to be truthful with each other (*makar skall visa varandra trohet och hänsyn*), and they should jointly manage domestic relations, including the care of children, and act in consultation with each other for the best interests of the family (art. 2). These provisions are the only provisions in the Code that deal with the ethical aspects of marriage. However, it should be pointed out that these provisions are a reminder of the desirability of respect for ethics and loyalty and do not constitute rules on sexual fidelity.

Each one of the spouses owns and administers his or her own property and is responsible for resulting debts (art. 3). This provision follows one of the fundamental principle in the Scandinavian countries respecting marital property. [24] This principle is based on individual

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[23] Note that the question of bigamy/polygamy is stipulated as a marriage impediment in Chapter 2, *infra*.

[24] The term *marital property* as applied in the Swedish Marriage Law can be described as a deferred community property. Hence, individual ownership is retained by the spouses until the entire matrimonial estate is divided (*see infra*, Chapters 7-13).

ownership as long as the spouses remain married or as long as no request for partition is made. [25] However, this right to individual ownership is not absolute in that certain limitations exist on the power of each spouse to deal with individual property rights during the marriage. [26]

The married couple must share their living expenses, duties, and responsibilities jointly and sincerely. They shall be honest with each other and disclose all information that can influence the family's financial situation (art. 4). These provisions emphasize that the married couple should trust each other and try to jointly solve the financial problems both respecting the daily necessities and long-term investments for the family's future. The provisions become more practical when both the husband and the wife work and have their own incomes. Hence, as can be understood, the meaning of these provisions is to provide not only for the family's needs but also to look far beyond to its future economic prosperity. However, there are no sanctions in connection with these rules. The Committee did not find it feasible to enforce certain sanctions when the couple is married and living together. In the Committee's opinion, the economic problems usually arise when the couple no longer wishes to live together, for it is then that knowledge of each other's economic disposition becomes crucial to the partition of the marital assets. Thus, Chapter 7 contains certain provisions which compel economic disclosure for distribution of marital property when a marriage is dissolved. Earlier the Family Law Commission had expressed the view that some of the obligations for economic disclosure could be enumerated. Listed among these is the right to know whether either of the spouses had executed a will or had an insurance policy, and that both had the right to be informed of the content of the other spouse's income tax return. The Committee, however, did not find it necessary to insert obligations

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[25] *See infra*, Chapter 9.

[26] *See infra*, Chapter 7.

recommended by the Commission. Nevertheless, the Committee suggested that some changes be made in the Swedish insurance law, namely the duty to disclose the designation of a beneficiary in connection with a life insurance policy.

Marriage is dissolved either by the death of one spouse or divorce (art. 5). In order to complete the definition of the term *marriage*, the Committee deemed it necessary to stipulate the above-mentioned provision in a chapter dealing with the meaning of the concept.

TITLE II. Entry into and Dissolution of Marriage

Chapter 2: Impediments to Marriage [27]

A person who is under 18 years of age may not enter into a marital relationship without a license issued by the county government of the place of legal residence. The underlying reason for establishing a basic marriage age is to assure that the parties have attained a certain degree of maturity and thus an awareness of the consequences of their action. Earlier the marriage age was 21 for a man and 18 for a woman. In the absence of any scientific support for different maturity ages for men and women and with a view to bringing about equality, it was decided that the age of 18 should be the marriage age for both sexes. However, the issue of age is a dispensable impediment, and the county government, upon application, can grant an exemption from the age requirement. Although the Law does not stipulate any minimum marriage age, in practice persons under 15 are rarely granted an exemption from the age requirement. In dispensation cases, the county government, before issuing the license, is to consult with both the parents and the Board of Social Services of the place of the applicants' residence. Although the

[27] Arts. 1-4.

consent of the parents is not mandatory, the parents/guardians can appeal to an administrative court, if the county government issues a license against their advice.

Earlier, there were several mental illnesses which were considered impediments to a marriage. The relevant provisions in the new Law contain a simplification of the previous, and to a certain extent, unjust rules. Accordingly, only persons with a serious mental illness or mental deficiency will be deprived of the right to marry. However, this matter is also a dispensable impediment. The consent of the guardian is, according to the law, adequate for an exemption. Should the guardian refuse to give consent, the individual can apply for an exemption to the district court. The court may, upon investigating the matter, allow the marriage.

Those who are of direct lineal descent or ascent or are siblings may not enter into a marital relationship. A half brother and a half sister may not marry each other without a licence issued by the government or the authority designated by the government. In the 1920 Marriage Law, a marriage between certain in-laws and between an uncle and a niece and an aunt and a nephew was barred. The Committee found no definite reason for such impediments and these were repealed. [28] Thus, as can be observed, the only remaining impediment in this respect is the impediment of consanguinity, i.e., the prohibition of marriage between siblings and blood relations of unilinear descent. However, regarding a marriage between a half-brother and a half-sister, the Committee referred to a medical report according to which the genetical risk for the offspring of such a relationship appeared to be the same as for the offspring of a relationship between a sister or brother and the other sibling's offspring. Nevertheless, with due consideration to the social factors involved, the Committee suggested that this matter should be subject to a dispensation granted by the government. Such exemptions are rarely to be granted and only when special

[28] SOU 1972:41, pp. 137-139.

circumstances might exist, such as a situation where the parties were brought up in separate homes. [29]

Regarding the provisions on bigamy and polygamy, the Committee stated that since Sweden belongs to a cultural tradition viewing the family in the context of monogamy with all its attendant legal rights and obligations, the law should reemphasize this principle as a marriage impediment. The Committee admitted, however, that in principle little could be done to prevent people from living together and forming polygamic families. Nevertheless, the Committee felt that the Law had to be clear on this issue, and thus the statutes respecting the marriage should be governed only on the relationship between one man and one woman. [30]

Chapter 3: Investigating Marriage Impediments [31]

A marriage shall be preceded by an investigation as to whether there are any marriage impediments. The investigation shall be carried out by the registration office of the parish where either party is registered. If neither of them is registered anywhere in the country, the investigation shall be carried out by the parish where one of them resides. The couple must make a joint application for the investigation.

From the beginning of the 13th century until the year 1968, the intention of the couple to get married was publicly announced in the church of the place of residence of the woman on three consecutive Sundays. If by the end of this period no objection was made or otherwise no problems impeding the marriage existed, the church issued a certificate on the basis

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[29] SOU 1972:41, pp. 137-139.

[30] *Id.* pp. 139-140.

[31] Arts. 1-4.

of which the couple was allowed to get married. However, the publication of banns was abolished in 1968 and lost its legal effect.

The couple applying for an impediment investigation must submit a written assurance on honor and conscience that there is no blood relations of linear ascent or descent between them and that they are not siblings. If they are not submitting a government dispensation concerning the marriage between a half-brother and a half-sister, the said assurance must even include this matter. A person who requests a marriage impediment investigation must on his honor and good conscience indicate in writing whether a previous marriage had existed. If evidence of the dissolution of a marriage cannot be found in the population register or through a certificate from a foreign government, the individual must prove that the earlier marriage has been dissolved. If the investigation leads to the conclusion that there is no impediment to the marriage, the registration office must issue a certificate to this effect upon request. It should be pointed out that if an alien who is not living in Sweden intends to marry in Sweden a certificate of marriage eligibility must be furnished.

Chapter 4: Marriage Ceremony [32]

The marriage ceremony must be performed in the presence of relatives or other witnesses. However, the Committee believed that the procedure for entering into marriage should be decided by the couple, i.e., their notification sent to a public representative would be adequate for the recognition of the marriage. Thus a religious or any other kind of ceremony by which the couple might wish to surround the marriage procedure would not be regulated by law. It was felt that society should not establish rules beyond those which aim at:

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[32] Arts. 1-7.

-- guaranteeing the consent of both parties to the marriage;

-- safeguarding the public interest that the marriage is not entered into contrary to any impediments; and

-- registering the change of status.

The Committee added that these purposes will be fulfilled by the requirement that the notification on which the marriage is based shall be made jointly and in writing. It shall state that both individuals are in agreement on the marriage and that the notification shall be submitted to a public representative personally by the parties. [33] However, a marriage without ceremony was criticized by various groups, and thus the law was not changed in this respect. Accordingly, the performance of a church or a civil ceremony gives the marriage binding legal effect.

Both parties shall be present at the ceremony. Marriage by proxy is not recognized by the Law. Each party shall consent to the marriage when asked by the official performing the ceremony. The performing official will thereupon pronounce that they are husband and wife. If the procedure is not followed accordingly, or if the performing official is not authorized to perform the ceremony, the marriage is not valid. However, in such circumstances the government may approve the ceremony, if it finds there are special reasons for such an approval. This issue can be considered by the government only when requested by either party or, if one of them has died, it is requested by the heirs of either individual. In exceptional cases the government may approve a ceremony which is otherwise invalid. The main purpose of this rule is to ensure that a family which is already formed does not unnecessarily break up, and that no innocent party suffers damaging consequences.

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[33] SOU 1972:41, pp. 145-157.

The following persons are authorized to perform the marriage ceremony:

-- a minister of the Church of Sweden;

-- a pastor or an official of any other denomination provided the government has recognized the congregation's right to officiate at marriages and that the county government has issued a certificate authorizing the official of the said congregation to perform marriage ceremonies;

-- a judge of a district court; or

-- a person who has been appointed by the county government to perform this function.

The 1920 Law of Marriage prescribed certain restrictions concerning the religious wedding ceremony in the Church of Sweden, i.e., the Lutheran Church, for those who did not belong to the Church. According to the 1987 Law, as long as one party is registered in the district where the church is situated, a wedding ceremony may be requested in that church, i.e., if they wish to have a church wedding.

Before performing the marriage ceremony, the official must ascertain that the investigation respecting marriage impediments has been carried out within four months of the date of the ceremony, and that no impediments exist. If the marriage is not performed within four months after the date the certificate of impediment is issued, the certificate is invalid and a new investigation is required.

Certain procedures must be followed in the Church of Sweden in performing a wedding ceremony. Other congregations are free to pursue the discipline of their own traditions. Respecting the civil wedding ceremony, the Swedish government has already issued instructions for

the proper procedure. [34] In addition to a standard civil marriage, there is a simplified form which can be performed upon request. It has the same results, namely a legally binding marriage.

The official who performs the ceremony must immediately present the certificate of marriage to the spouses. Under the 1920 Law, their right to receive a marriage certificate immediately after the performance of the ceremony was limited to a church ceremony. This requirement of delivery now applies to all types of ceremonies.

Chapter 5: Divorce [35]

The legal institution of separation has been abolished in Sweden. However, in order to prevent hasty divorces, the Law prescribes a six-month reconsideration period in certain cases. During this period the spouses are not compelled to live apart, but if one party petitions the court, a separation may be ordered during the waiting period.

The principle of free and mutual consent for marrying has to be respected when the spouses no longer wish to continue their union. Accordingly, the spouses are free to dissolve the marriage whenever they so desire. However, since marriage brings about numerous legal and social consequences, the marriage can be dissolved only by a divorce decree rendered by a court as long as both spouses are alive. Thus, a divorce decree shall be issued immediately if both parties agree to dissolve the marriage. However, a divorce decree must be preceded by a six-month reconsideration period, if both spouses request it or one of them has a child under sixteen,

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[34] *Kunglig. Kungörelse* (KK 1964:678 and KK 1973:694).

[35] Arts. 1-6.

has actual custody, and lives with the child. [36] If only one of the spouses desires a divorce, the marriage may be dissolved only after the period of reconsideration is honored. The period of reconsideration begins when the spouses submit their joint request for a dissolution. When only one of the spouses desires this recourse, the reconsideration period starts when the application is served on the other spouse. A decree of divorce can be rendered only upon receipt of a special petition from one of the parties and only after the expiration of the reconsideration period. The case must be dismissed if no petition is made within a year after the date the waiting period began.

Although the Law does not require that a married couple should live together, in practice it is presumed that they do share a home. Hence, if it is established that the spouses have lived apart for a period of two years, either party is entitled to initiate an action for an immediate divorce without a period of reconsideration.

During the six-month reconsideration period, the couple should have an opportunity to consult a mediator or a family counselor. According to the 1920 Marriage Law, mediation was a mandatory procedure after obtaining a judicial separation. However, since compulsory mediation was highly criticized and was thought to have certain negative effects, mandatory mediation was repealed. Today the spouses have access to voluntary mediation [37] or family counselling, a service which is provided by local authorities. Hence, as soon as divorce proceedings are instituted, the spouses are informed of the reconciliation assistance they can obtain from Swedish social agencies.

As can be observed, subject to the period of reconsideration, where such a waiting period is required, a divorce decree must be rendered automatically. No questions should be

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[36] Note that the questions relating to child support, custody, upbringing, and the like are regulated by the Parents and Children Act.

[37] The 1973 Law (SFS 1973:650) on Mediation Between Cohabitants.

asked and no investigation is allowed as to the reasons for the divorce. The new Law is hence based on a no-fault dissolution of the marriage. It has repealed the old rules which made one spouse's fault a ground for immediate divorce, and sometimes even brought about certain other legal effects, such as a right to damages and a reduced right to maintenance and a diminished right to secure custody of the children.

Insofar as the custody or access to children is concerned, the relevant provisions are usually included in the agreements made by the spouses and submitted to the court. Although the court has the power to disapprove a custody agreement, in practice such a power is seldom exercised. Sweden has a well-established child welfare service that works closely with parents to solve problems that result from a divorce. The divorce proceedings are not seen as a special occasion for a court-directed inquiry into the suitability of the parents to raise their children. In fact, the Swedish courts handle family cases with a minimum of formality.

No period of reconsideration is required for dissolving a marriage which was entered into contrary to an indispensable impediment such as consanguinity or bigamy. In such cases, a decree of divorce is immediately issued by the court upon petition by either one of the parties or the public prosecutor. In the 1920 Marriage Law such marriages were annulled. However, annulment is abolished in the new Swedish Marriage Code. Speaking of this legal institution, the Committee recognized that in practice this was seldom used and that the incidental effects of the dissolution of such marriages can be properly regulated in the relevant legislation. Therefore, there appeared to be no further need for retaining such an institution, and divorce is the only form of dissolution of marriage during the lifetime of the parties. [38]

[38] SOU 1972:41, pp. 158-169.

TITLE III. Matrimonial Economic Relations

Chapters 6 through 13 of the new Law contain provisions respecting the duty to contribute to the maintenance of the family, basic rules regarding the marital property, gifts between the spouses, and the rules governing the division of marital property. These provisions represent substantial changes as compared with the 1920 Marriage Law.

Chapter 6: Maintenance

This chapter contains eleven articles which deal with the question of maintenance, both during the marriage and after its dissolution. However, in the past few decades, the growing number of women working outside the home has brought about a change of conception as to the duty to maintain a family. Thus, it is no longer the husband who bears the sole responsibility for family support. Today, in accordance with their means, both husband and wife are under mutual obligation to contribute to the family maintenance in a manner that such contributions provide for all the personal and joint needs of the family. If one spouse's contribution is not adequate, due to his or her means, the other spouse must make the necessary contribution to meet the needs for the maintenance of the family. If, due to sickness, a spouse cannot personally manage to maintain the family, the other spouse may withdraw the former's income including amounts from bank deposits and the like to the extent the needs require. Such authority, however, is not granted if the spouses are no longer living together or there is an agent, guardian, or administrator representing the sick or absent spouse. A like action on the part of one spouse binds the sick or absent spouse vis-à-vis a third party, even if there was no intention to use the means for the family maintenance. However, there is a bona fide requirement in this provision, namely that the

third party was in good faith, i.e., the individual did not know or could not have known that the means were not intended to meet the family needs.

If one of the spouses neglects the duty of contributing to the family maintenance, the court may require that spouse to make the necessary contribution.

In case the spouses no longer live together, one of the spouses may have the obligation to make a contribution to the other spouse's maintenance. However, as was mentioned above, the obligation to make this contribution is in principle dependent on the ability to pay and is not meant to bring about unnecessary hardship to either one of the spouses. The court may also obligate one of the spouses to give household effects to the other spouse. Such an obligation, however, concerns those household effects which constitute marital property. [39]

In principle, the dissolution of a marriage terminates the obligation to contribute to family maintenance. However, if it is determined that one of the spouses is in need of alimony during a transitional period, he or she is entitled to an equitable contribution. The amount of the alimony must be decided with due consideration of the ability of the paying spouse and other circumstances involved in each case. It should be added, however, that under no circumstances may the question of the spouse's fault be taken into consideration for a decision on the amount to be paid as alimony no matter what the nature of the fault might be. [40]

No time limit for the transitional period is fixed by the law. It is rather up to the court to decide on the length of time in each case. However, it can be asserted that when exceptional circumstances exist or when the marriage has lasted for a long time and one of the

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[39] *See infra*, Chapter 9.

[40] *Supra*, Chapter 5.

spouses has difficulties with self support, that spouse is entitled to alimony for a longer or even an indefinite period of time.

The alimony must be paid periodically after dissolution of the marriage. The court may order a lump-sum payment, if special circumstances call for such a decision. The amount of the alimony changes in accordance with changes in the "base amount" which in itself is based on the *Consumer's Price Index*. The court may also adjust the alimony, if the change of circumstances or the circumstances that have brought about a maintenance contract justify an adjustment.

Chapter 7: Marital Property

This chapter deals with defining the terms *marital property* and *marital home* and contains nine articles. The question of whether certain property is to be considered as separate or marital property, as well as restrictions imposed upon the spouses for transactions concerning marital property, are regulated in this chapter.

The term *marital home* is defined as a dwelling where the married couple live together. The definition also includes the household effects that are used exclusively in a marital home. Even if the domicile is leased property, i.e., it is not owned by the spouses individually or jointly, it still maintains its characteristic of being a permanent residence where the spouses live together.

In principle, property belonging to each spouse is considered marital property unless the property constitutes separate property. Separate property can be established by an antenuptial contract (*äktenskapsförord*). However, by a new contract the spouses may agree that the property separated by an antenuptial contract shall henceforth be considered marital property. Such a

contract must be in writing and signed by both parties. If one spouse is a minor, the guardian's written consent is required. An antenuptial contract must be registered with the court.

Separate property can also be established by a will or a deed of gift under the condition that it shall remain separate. Furthermore, any property that replaces separate property will likewise be separate property. However, unless the document that creates separate property prescribes otherwise, the income from such property is considered marital property.

A spouse who has property rights to a marital home and its household effects cannot proceed with any transactions whatsoever regarding the home and household effects without the written consent of the other spouse. The only exception to this rule occurs when the marital home is the separate property of a spouse or has been established as such by a will or a deed of gift under the condition that it shall remain separate property. [41] Moreover, the written consent of the other spouse is always required whenever a spouse-owner of property decides to proceed with transactions such as selling, mortgaging, leasing, and the like, if the property involved is not separate property.

Although each spouse owns his or her own property during the marriage, [42] since the property which is not separate is nevertheless marital property, the consent of the other spouse is required for all types of transactions respecting such property, even if it is owned individually by one of the spouses. However, the court may, upon application by the spouse concerned, grant

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[41] Note that the rules respecting the right to the marital home are likewise applicable to a marriage that was in effect before 1921. However, the right to the marital home is granted only to the surviving spouse, if the marriage is dissolved by death (Law on Promulgation of the Marriage Code, SFS 1987:788).

[42] *Supra*, Chapter 1.

permission to proceed with transactions if the other spouse refuses to give reasonable consent. [43] The rule concerning the requirement of consent must likewise be applied whenever the transaction concerns the estate of a deceased spouse.

If a spouse or the estate of a deceased spouse disposes of marital property without the consent of the other spouse or permission granted by the court, the spouse whose consent was not obtained has cause for action. The court shall, upon application by the spouse concerned, declare the transaction void. Hence, the property must be returned in order to establish *status quo ante*. There are, however, certain rules concerning the protection of a bona fide purchaser in this context.

Chapter 8: Gifts Between Spouses

In the 1920 Marriage Law, a special written agreement was required in order to give binding effect to gifts. The agreement was effective against the creditors of the donor spouse as of the date it was registered with the court. The 1987 Law, however, stipulates a different arrangement. Hence, a gift between the spouses becomes effective on the same basis as the law requires for the binding effects of gifts in general, i.e., by possession in case of personal property and by deed in case of real property. It is, however, often difficult to prove possession when the couple lived together permanently. In such a case, the gift must be registered in accordance with certain prescribed rules. [44] The gift cannot be seized by the donor's creditors after the registration

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[43] According to transitional provisions of the Law on Promulgation of the Marriage Code (SFS 1987:788), if one of the spouses proceeded with certain transactions respecting marital property without obtaining the consent of the other spouse before the entry into force of the new Law, the provisions of the old Law apply.

[44] *See infra*, Chapter 16.

date. If the gift is merely of a personal nature and is in conformity with the donor spouse's economic standing, no registration is required for its binding effect vis-à-vis the creditors. Moreover, there are some types of property, such as a ship or vessel, that require special registration for the transfer of property rights. In such cases, the gift must also be registered in accordance with the regulations concerned.

Even if a gift cannot be seized by the donor's creditors, the Law does not provide the donor with total protection. Thus, the donee must pay back the equivalent of the gift received, if the donor cannot pay the debts owed at the time the property was transferred. There are, however, two exceptions to this rule. First, if the gift is of a personal nature and in conformity with the donor's economic standing, the donee is under no obligation to return the gift or its equivalent. Second, if at the time the gift is given the donor is still in possession of adequate assets corresponding to the donor's debts, the donee is protected vis-à-vis all creditors. Furthermore, if the donee has disposed of the property partly or wholly, without being at fault, no liability applies. The Committee had originally suggested that a one-year limit should be imposed for claims against a donee spouse, but the government decided not to insert any provision to this effect in its final proposal. [45]

Chapter 9: General Provisions on Division of Marital Property

Chapter 9 [46] contains provisions on the time for the division of marital property, questions which can arise in this connection, the registration of the agreement on the partition of

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[45] Proposition 1986/87: 1, pp. 142-146.

[46] Arts. 1-13.

marital property, and the authority of the court to protect marital property upon application by the concerned spouse.

In principle, the dissolution of a marriage brings about the right to partition the marital property. The balance of each spouse's marital property as of the date when the application for divorce is submitted to the court, or when the marriage is dissolved by death, constitutes the net marital assets of the spouses. However, if the assets of each spouse consist only of separate property, i.e., there is no marital property and no request to possess the marital home, no claim for a division will arise on either side. Thus a division of property will be unnecessary. The law does not require any partition of property as long as there is an agreement between the spouses that there is no property to be divided. A married couple can even proceed with a division of marital property without dissolving the marriage. They can also agree that a certain separate property shall be considered marital property and be included in the division of property. [47] Such agreements, however, must always be registered with the court. Even shortly before submitting an application for divorce, the couple can make an advance agreement respecting the division of marital property. Such an agreement must be in writing and signed by both parties.

As long as the marital property is not divided, each spouse is accountable for his or her part of the property. Each spouse is also under the obligation to furnish the appropriate information required for making an inventory of the marital property. An inventory of the marital property shall be made by both spouses. If one of the spouses has died, the heirs shall participate in making the inventory. However, if no agreement can be reached, the court must appoint an executor, usually an attorney, to proceed with the inventory and distribution of the property. [48]

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[47] Chapter 9, *see infra*, Chapter 10.

[48] *See infra*, Chapter 17.

Also, where an application for divorce has been filed and one of the spouses requests the assistance of the court for the protection of marital property, the court must take the necessary measures for the administration of the property. However, there will be no need for such a measure if the spouse/owner of the marital property concerned provides satisfaction and adequate security to the courts.

Finally, it should be pointed out that since, according to the general principles governing marital property, each spouse owns and administers his or her property during the marriage and until such property is divided, that person is also responsible for his or her own debts. However, if one spouse's property is under administration by court order, that property can be liable for the spouse owner's debts only if the other spouse is jointly liable for the same debt or if the property is already subject to a lien.

Chapter 10: What Should Be Included in a Division of Property?

This chapter consists of 5 articles which describe what property should be included in a division of property and which property should be excluded from the partition. As was stated earlier, [49] marital property is that property which is not separate property, and it is always subject to and must be included in the partition in accordance with the rules concerned. Furthermore, the spouses are free to agree that any property that has been kept separate by an antenuptial contract, and also the property that has replaced it shall be included in a division of property. Even certain property that can legally be considered as absolutely personal and not subject to a division can be included in a division of property by agreement, provided the agreement does not counteract the principles upon which these rights are based.

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[49] *Supra*, Chapter 7.

Each spouse is entitled to exclude from the partition, to a reasonable extent, all clothing, personal gifts and effects that can be used only for personal purposes. The grounds for establishing the degree of reasonableness is the economic standing of the spouses. [50] However, if the partition takes place because of the death of one of the spouses, the above-mentioned rule applies only to the surviving spouse.

The rights that are not transferable or are of such a nature that they must be considered as personal rights shall not be included in a partition, if the inclusion of such property contradicts the principles upon which these rights are founded. The right to certain types of personal pension is of such a nature that it must be regarded as a personal right and hence excluded from a partition.

Chapter 11: Division of Property

This chapter is divided into two parts. Part One (arts. 1-5) deals with questions relating to evaluating the marital property such as obtaining the balance of each spouse's marital property and each spouse's share in the total matrimonial assets, hereinafter *matrimonial estate*. Part Two (arts. 6-10) contains provisions on the division of marital property between the spouses and cases in which no partition can take place because of the nature of the property involved.

The first step in a division of marital property is to establish the spouses' shares in the matrimonial estate. In order to achieve a net balance, the debts of each spouse must be deducted from the marital property. The time for attaining the balance is the date when application for divorce is filed, when the record for the division of marital property without

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[50] *Supra*, Chapter 8.

dissolution of marriage is registered, [51] or when the marriage is dissolved by death. Once the balance is established, the total of the remaining assets constitutes the matrimonial estate which is divided equally between the spouses. In principle, only the debts that are accrued in connection with transactions involving marital property can be deducted to attain the balance. There are, however, some exceptions to this rule. If a spouse cannot pay those debts connected with separate property, or property which is not transferable, such debts may be deducted from the marital property of that spouse in order to reach a final balance.

In the 1920 Marriage Law, if a spouse had mismanaged the marital property to the other spouse's detriment, the latter was entitled to compensation for the loss suffered. In the meantime, if a separate property had been used to improve the marital property, the owner-spouse was compensated for the balance.

However, in its final report in preparation for the 1987 Law, the Committee concluded that the rules governing the compensation for the loss or profit brought about by an undertaking on the part of a spouse no longer served any practical purpose. In most cases the undertaking concerned an action that had taken place so long ago that it was practically impossible to establish the real effect of such measures at the time the marital property was divided. Therefore, taking into consideration the provisions of Chapter 12 [52] relating to an adjustment of a division of the matrimonial estate, and in an effort to bring about equity in each individual case, the Committee decided to repeal the rules governing compensation in connection with a division of matrimonial estate. [53]

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[51] *Supra*, Chapter 9.

[52] *See infra*, Chapter 12.

[53] SOU 1981:85, pp. 369-377.

Nevertheless, the Committee believed that there were cases of abuse, and special rules had to be provided to prevent such situations. Accordingly, it was stipulated that if within a year before the date of an application for a divorce, a spouse without the consent of the other spouse, significantly disposes of marital property or uses it to improve the separate property, the value of such property will be added to the marital property of the spouse concerned. Consequently, in the total matrimonial estate, the share of the spouse who either disposed of marital property or used such property to improve the separate property will decrease by the corresponding value of the said transactions. Thus the other spouse will be compensated for the loss incurred.

If a deceased spouse had made a gift to an heir as an advance inheritance, its value must be added to the balance of the marital property of the deceased spouse. As a result, the surviving spouse's share in the total balance will be increased.

Once the total balance of the matrimonial estate is established, the property will be divided into portions. Each spouse is entitled, as a matter of priority, to retain the whole or a selected part of his or her marital property as a portion. The spouse who is in most need of the marital home or household effects will be entitled to possess them. However, if this property is of any significant value, the equivalent will be added to the share of the other spouse. If the marital home is a separate property which belongs to one spouse, [54] the spouse in need of the home may possess the property only if circumstances in the case indicate that there are strong reasons for possession. If a spouse wishes to retain certain marital property or to possess the marital home and household effects in addition to his or her share, the other spouse must be compensated for the value of the property.

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[54] *Supra*, Chapter 7.

Chapter 12: Equitable Distribution of a Matrimonial Estate

This chapter consists of three articles and contains provisions concerning a deviation from the general principle of equal division of the matrimonial estate, if an equal division leads to an unjustified result. Thus, there should be an adjustment if it would be inequitable to divide the matrimonial estate on an equal basis because of the duration of the marriage and the economic standing of the spouses and other circumstances involved. In such a case, one of the spouses would be able to retain a greater part of the marital property than that person would normally be entitled to under the provisions of Chapter 11. [55] If one spouse has filed for bankruptcy or there are other reasons which might prevent a division of property, each spouse shall retain a his or her share of the marital property.

When a division of the matrimonial estate is to take place in connection with the death of a spouse, the surviving spouse is entitled to request that each party retains his or her own marital property. In this case, no distribution is made. If the surviving spouse limits a request to a part of the marital property, the corresponding value may be retained by the estate of the decedent spouse. Thereafter, the remaining matrimonial estate will be equally divided between the two parties.

If a condition in an antenuptial contract is unconscionable, taking into consideration the contents of the contract, the circumstances that brought about the agreement and also the subsequent change in circumstances, the contract will be adjusted or will be entirely disregarded when the matrimonial estate is partitioned. The same rule will apply when the spouses make an

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[55] *Supra*, Chapter 11.

advance agreement concerning the division of marital property shortly before the anticipated divorce procedure. [56]

The duration of a marriage gives cause for an adjustment. The Committee concluded that the entire matrimonial estate should be subject to equal division whenever a marriage has lasted at least ten years. However, consultations with other Scandinavian countries led to a final decision that a marriage that has lasted fewer than five years should be considered of short duration, and thus the provisions concerning the adjustment will apply to such a marriage. [57] Hence, the longer the marriage lasts, the more likely it becomes that the division of the matrimonial estate will be on an equal basis. It should be pointed out that the use of the five-year period as a basis for judging the duration of a marriage is only a guideline. Under certain circumstances, even if the marriage has been of short duration, a minor adjustment or no adjustment at all will be made.

In practice a combination of circumstances surrounding the matrimonial relations must be taken into consideration. Factors such as the duration or economic standing of each spouse cannot be used alone in determining the basis for adjusting a division of property. These circumstances sometimes may bring about a contrary conclusion, namely that an adjustment can entail inequitable consequences. Such a situation occurs when one spouse is in ill health or lacks professional training. Under no circumstances may fault for the marriage dissolution be taken into consideration in dividing the matrimonial estate. [58]

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[56] *Supra*, Chapter 9.

[57] Proposition 1986/87:1, pp. 44-48 and 184-180.

[58] *Supra*, Chapter 5.

Chapter 13: The Effect of a Division of Property

This chapter contains 6 articles and regulates questions relating to the legal effects of a division of property. The provisions of this chapter cover such questions as the liability vis-à-vis a third party, returning gifts, or the amount of the pension insurance which has been included in the matrimonial estate.

Except for the marital home, a spouse may not include separate property in a division of the matrimonial estate, if this action would be detrimental to the creditors. In addition, neither spouse may dispose of property that must be included in a division of property. [59] If a spouse proceeds with such actions and consequently is unable to repay debts, the other spouse is liable for the corresponding value that was gained as a result of the undertaking. However, if at the time of the division of property, the former still possesses adequate property to cover the debts, the latter would not be liable to the former's creditors. The same rule applies to a surviving spouse vis-à-vis the estate of a decedent spouse. But if the spouse who acted to the detriment of creditors dies, the relevant provisions of the inheritance law will be applied.

If one spouse's share of the matrimonial estate is increased by the value of a gift that was made by the other spouse to a third party [60] but the former cannot take out a full share, the donee must return the gift or its equivalent if he knew or should have known that the gift was detrimental to the donor's spouse. The statute of limitations for this action is 5 years from the date the gift becomes effective. Likewise, if one spouse's share is increased by the value of a pension insurance that has been included in the matrimonial estate, [61] but the spouse entitled to

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[59] *Supra*, Chapters 7, 9, and 11.

[60] *Supra*, Chapter 11.

[61] *Supra*, Chapter 10.

such an increase cannot take out a full share, the insurer is under the obligation to pay the corresponding value directly to the spouse concerned.

If, as a result of a division of a matrimonial estate, both spouses come into possession of a real property without having reached any agreement for the partition of the property, they will be joint owners of the property. Thus, an agreement which provides that a part of a real estate shall come into the possession of one of the parties is void *ab initio.*

Finally, the spouses jointly or individually may register the records of the proceedings on the division of the matrimonial estate with the court.

TITLE IV. The Rules of Procedure

This title, the final section of the 1987 marriage Law, consists of five chapters (14-18). It deals with questions relating to judicial procedures in connection with a divorce, the existence or non-existence of marriage relations, the decisions made by various authorities respecting the marriage impediments, the performance of the marriage ceremony, marriage registration and related matters, and the appointment of an executor or an administrator under certain circumstances.

Chapter 14: Matrimonial Case and Alimony [62]

A matrimonial case is a matter concerning a divorce petition or a situation in which the issue is whether or not marital relations exist between the couple concerned. An action concerning the question of whether a marriage exists can be processed in a dispute only between a man and a woman. However, the issue can also be processed in a dispute in which a third

[62] Arts. 1-18.

party's right is involved. Such cases come under the jurisdiction of the local district court where the parties reside. If neither resides in Sweden, the district court in Stockholm has jurisdiction.

If both spouses have consented to a divorce, they must submit a joint petition to the court. When there is no mutual consent and only one party seeks a divorce, the spouse seeking the divorce must bring an action by suing the other spouse. The court will then initiate the proceeding by serving the appropriate summons. When a petition for divorce is filed, the court must investigate whether a divorce decree should be rendered immediately or whether a reconsideration period should be honored. [63] If the court finds that the six-month reconsideration period should be observed, it must pronounce the date on which this period begins and the date that a motion for divorce can be made. [64] A motion requesting a decree of divorce, after the reconsideration period, may be made in person orally before the court or in writing. If one spouse has made the motion, the court must provide the other spouse with an opportunity to express an opinion concerning the motion.

After a joint petition for divorce has been made, either spouse may revoke the petition. The court must, however, continue the case if the other spouse initiates a motion. The same rule governs in a case in which from the beginning only one party files a petition for divorce and later either revokes it or does not appear before the court. This rule means that once a petition for divorce has been filed, the case leads to a divorce decree as long as one of the spouses moves for a divorce.

In connection with a joint petition for divorce, the couple may include certain incidental issues, provided there is also mutual consent with respect to such issues. These

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[63] *Supra*, Chapter 5.

[64] *Id.*

incidental matters may include alimony, the question of access to and custody of the children, and the right of one spouse to continue to live in the marital home [65] until the final partition of the marital estate.

In a matrimonial case the court may, upon a motion by one party, make certain interim decisions. However, there should not be any ex parte decision, and the court must notify the other spouse before making an interim decision. As an interim decision, the court may order that one spouse remain in the marital home; and, hence, the other spouse must immediately leave the premises. The court may impose upon one of the spouses an obligation to contribute to the other spouse's maintenance. [66] The court may also issue an order forbidding the spouses to visit each other. The penalty for the violation of such an order is a fine or imprisonment for up to one month.

As a temporary measure, until a divorce decree is rendered and becomes final, the court may also decide on the question of access to and custody and support for the children by applying the provisions of the Parents and Children Act.

Upon rendering a divorce decree, the court must review all its interim decisions and issue a final order with respect to those decisions. Concerning the payment of alimony by one of the spouses, the court must make a final decision as to whether such a payment shall be made for a long time or even for an indefinite period of time.

The rules of procedure respecting maintenance are likewise applicable when one spouse petitions the court to impose an obligation upon the other to make maintenance

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[65] *Supra*, Chapter 7.

[66] *Supra*, Chapter 6.

contributions or to pay alimony while they are still married or when an adjustment of the alimony is justified. [67]

Decisions of the district court may be appealed to the regional court of appeals.

Chapter 15: Questions Relating to Entry into Marriage [68]

As was stated earlier, the county government is empowered to grant a dispensation from the requirement of age impediment. [69] Although the parent/guardian consent is not required, the county government must request an opinion. Thus, if against the advice of this party, the county government issues a marriage license to the minor, the parent/guardian is granted the right to appeal to the region's administrative court (*Kammarrätten*).

A decision made by a district court judge on the performance of a marriage ceremony and also a decision of a person empowered by the county government to perform a marriage ceremony [70] may be appealed to the county government.

A marriage impediment decision made by a district registration office or a decision made by a minister in the Swedish Church concerning the performance of a marriage ceremony may be appealed to the diocesan court. A diocesan decision or a decision made by the county respecting the performance of a marriage ceremony may be appealed to the regional administrative court.

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[67] *Supra*, Chapter 6.

[68] Arts. 1-4.

[69] *Supra*, Chapter 2.

[70] *Supra*, Chapter 4.

Chapter 16: Registration

All information which is subject to registration under the 1987 Marriage Law must be recorded in Sweden's Central Marriage Registration Office. An application for the registration must be submitted to a district court. The court must prepare a memorandum on the matter and immediately send a certified copy of the documents to the Central Office for registration. The date the application is submitted to the court constitutes the effective date of the registration. If the registration concerns a gift or a report respecting the partition of the matrimonial estate in accordance with the provisions of Chapter 9, the court must publish the matter both locally and nationally. [71]

Chapter 17: The Executor [72]

If the spouses cannot agree on the terms of a division of matrimonial estate, the court must appoint an executor upon a petition by one of the spouses. The petition for the appointment of an executor must be filed in connection with the matrimonial case and, hence, with the same district court that has jurisdiction over the case. [73] In some cases the petition can also be filed with a district court that has jurisdiction over the spouses' marital property. The executor must arrange for an inventory of the marital property. Each party must account for his or her assets and liabilities. If one spouse fails to make a financial disclosure, the court may oblige that

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[71] If a deed of gift, one which has been prepared before the entry into force of the new law, is submitted to the court for registration after the entry into force of the new law, it must be registered under the provisions of the new law (Law on Promulgation of the Marriage Code, SFS 1987:788).

[72] Arts. 1-8.

[73] *Supra*, Chapter 14.

spouse to submit the information required upon a motion by the executor. Upon one spouse's motion, the court must compel the other spouse to verify, under oath, the correctness of the inventory which has been made by the executor on the basis of the spouse's financial disclosure. In such a case the court may not take a final step before the oath has been properly sworn.

The executor must also decide on the date when and place where the property is to be divided, and summon the spouses to participate in the proceedings. The executor must in the first place make an effort to bring about an agreement between the spouses. The executor also identifies which property has to be included in the partition. If both parties are in agreement that no adjustment shall be made, the executor must abstain from the application of the provisions of Chapter 12 respecting the adjustment of the matrimonial estate. If no agreement can be reached between the spouses, the executor is empowered to make a final decision. This decision, nevertheless, must be made in conformity with the provisions of the Marriage Code. [74] If there is no property to be divided, this fact must be stated in the executor's report.

Finally, the spouses shall be served with the original or a certified copy of the records concerning the partition of matrimonial estate as soon as possible. If one spouse disagrees with the executor's decision, that spouse may file an action against the other spouse with the same court that appointed the executor within four weeks after the date of service. If no action is filed within the said time-limit, no further action can be taken in the matter.

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[74] *Supra*, Chapters 10-12.

Chapter 18: Common Provisions [75]

If a party against whom an action under the provisions of the 1987 Marriage Law has been taken lacks a known residence or is beyond reach, the rights of this party must be protected by an administrator who is appointed by the court.

As was stated earlier, after the petition for divorce has been filed and before the court issues a divorce decree, a number of interim decisions are made by the court. [76] However, if the question of temporary occupation of the marital home has not been resolved in these proceedings, the court may make a decision to this effect or even change a previous decision upon one spouse's petition.

It should be pointed out that when a petition for divorce is pending, the right forum for all issues relating to the marital property and matrimonial estate is the district court where the divorce petition has been filed.

Addendum

Several laws in relevant areas have been amended in connection with the 1987 Marriage Law. However, some of these laws have been modified in a minor way. In some laws the rules of procedure have been changed. Thus, only those laws which have been subject to significant amendments in substance will be discussed here. It should be kept in mind that most of the amendments in the area of inheritance and real property law are designed to protect not only a married couple but also the rights of unmarried cohabitants as well.

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[75] Arts. 1-5.

[76] *Supra*, Chapter 14 at 34-36.

The 1958 Inheritance Law [77]

The amendments to the Inheritance Law are meant to strengthen the protection of the surviving spouse with regard to inheritance. Changes include the right of the surviving spouse to a life estate in the decedent's entire estate, if the latter did not have children from any other union. Thus, if the deceased spouse had children only with the surviving spouse, the latter will inherit the entire estate. The same rule applies if the decedent had no children. In such a case, the parents or siblings and their children would be entitled to inherit the estate, provided the decedent had not instructed otherwise in a will. However, the surviving spouse's right to an inheritance is only for his or her lifetime. Consequently, at the death of the surviving spouse, the inherited estate must be divided between the heirs of the spouse who died first. This right of inheritance after the death of the surviving spouse, the so-called deferred inheritance (*efterarv*), can also be enjoyed by the deceased spouse's children from another union. This means that the separate children of the deceased spouse have the option to abstain from their inheritance rights during the lifetime of the surviving spouse.

In order to establish the balance of the decedent's estate, the matrimonial estate must be divided in accordance with the provisions of the 1987 Marriage Law. [78] If the decedent spouse had children from another union and they do not wish to abstain in favor of the surviving spouse, they are entitled to the remaining deceased spouse's estate. In all other situations, the surviving spouse takes the decedent's estate for life, unless the decedent instructed otherwise in a will. The surviving spouse cannot by means of a will deprive the heirs of the deceased spouse,

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[77] SFS 1981:359.

[78] *Supra*, Title III.

including parents, siblings and their children of their inheritance rights. If there are no children, parents or siblings and their children or a will making disposition of the estate, the surviving spouse inherits the entire estate without any future infringements on his or her property rights.

Finally, the requirement of protection of the surviving spouse has led to the establishment of a so-called *base amount rule*. The purpose of this rule is to guarantee a certain minimum amount to the surviving spouse. Accordingly, the surviving spouse is always entitled to a minimum amount corresponding to four times the base amount in accordance with the provisions of the National Insurance Law. [79] This amount includes the surviving spouse's separate property. The decedent spouse cannot by means of a will deprive the surviving spouse of the right to the base amount. However, any amount paid from the decedent's estate subsequent to the application of the base amount rule is subject to a deferred inheritance, as stated above, and when the surviving spouse dies must be divided between the heirs of the spouse who died first. It should be noted that the Committee suggested that any amount awarded to a surviving spouse as a beneficiary of an insurance policy should also be taken into account in calculating the balance of the estate. This suggestion, however, did not gain the government's approval, and thus no amendments were made to initiate the rule.

The 1970 Law on Real Property [80]

The amendments to the real property law concern the questions of tenancy, recording the real property transactions, and mortgaging the property.

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[79] SFS 1962:381. The base amount changes with the *Consumer's Price Index*.

[80] SFS, 1971:1209.

Lease contracts can have profound economic effects because of Swedish rent control regulations. The amendments provide unmarried cohabitants with the same rights as married couples with respect to their joint residence. The focal point is the right of a noncontracting co-habitant to acquire the lease when a marriage or a non-marital cohabitation is dissolved. As was stated earlier, [81] if a spouse intends to proceed with certain transactions with respect to the marital property, the other spouse's consent must be obtained. The amendments to the real property law stipulates a safety rule for the enforcement of the marriage law in this respect. Accordingly, if the seller of real property is married and the transaction documents do not contain the spouse's consent, the transaction will not be recorded until appropriate consent is produced. In addition, a deed of gift will not be recorded until the provisions of Chapter 16 of the Marriage Code on registration are met. A spouse who seeks to mortgage real property must have the consent of the other spouse. In case the property is separate, the applicant must be able to produce the necessary evidence to that effect. The same rule applies to unmarried cohabitants respecting their joint home.

The 1941 Insurance Law [82]

For the most part, the amendments to the insurance law cover questions relating to the designation of a beneficiary in connection with a life insurance policy. In principle, if there is a beneficiary after the death of the policy holder, the amount of the insurance is paid to him. In this case, the policy will not be included in the decedent's estate. The amendment provides,

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[81] *Supra*, Title III, Chapter 7.

[82] SFS 1941:416.

however, that when the implementation of the general rule brings about inequitable results detrimental to the children and the surviving spouse, an adjustment to this effect will be made. The insurance amount then may be paid partially or wholly to the surviving spouse or the children. A petition for the adjustment must be filed within a year of the date that the inventory of the decedent's estate was completed. If the policy holder designated the spouse as a beneficiary, the spouse who was married with the decedent at the time of death is the beneficiary. But, if a divorce proceeding was pending at the time of death, the spouse-beneficiary designation is considered void. When both the children and the spouse are designated as beneficiaries, one-half of the insurance amount is paid to the surviving spouse and the other half is divided between the children *per stirpes*.

The 1982 Name Law [83]

According to the provisions of this Law, a couple can select either spouse's last name as a joint family name. They can also choose to retain their individual last names. A couple planning to marry must report their choice of a joint family name at the latest in connection with the performance of the marriage ceremony. A joint last name can be acquired by the other spouse, only if the spouse whose name is to be used as a family name consents to this decision. A joint last name cannot be used by the spouses if the name was acquired in an earlier marriage. A spouse who has chosen to retain his or her last name at the time of entry into marriage may later on during the marriage acquire the other spouse's last name. Also, either spouse is free to change his or her last name to the last name he or she had before the marriage at any time during or after the marriage.

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[83] SFS 1982:670.

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